

Blood glucose monitoring systems used in treating diabetes in humans qualify for the low rate of tax. See 86 Ill. Adm. Code 130.310 and letters ST 92-0037, ST 94-0470, and ST 95-0518.

September 20, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 28, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are seeking a concurring review of our analysis of the taxability of ABC's Glucose monitoring system in Illinois.

Facts

Our client has developed a patented insertable short term sensor that wirelessly transmits blood glucose readings to the ABC held receiver. This unit works as a continuous glucose monitoring system that determines/monitors glucose levels in the blood for people with diabetes. These items are sold per a Prescription or a Statement of Medical Necessity. The system is inserted via the ABC applicator by the user or clinician just under the skin. Once inserted the user would wear the ABC sensor for up to three days before being replaced. After three days, the patient simply removes the sensor from the skin and discards it. A new sensor can then be used with the same receiver.

Issue:

1. Are sales of ABC's Continuous Monitoring Systems used to determine/monitor the glucose levels in the blood and prescribed by an authorized person for the treatment of a human being taxable in Illinois?

2. Are subsequent refills of ABC's monitoring sensors used to determine/monitor the glucose levels in the blood and prescribed by authorized person for the treatment of a human being taxable in Illinois?
3. Are there any special exemptions for Medicare, Medicaid, etc.?

Conclusion:

1. Sales/use tax is due at a reduced rate of 1% on sales of ABC's Glucose Monitoring System in Illinois because they are to determine/monitor levels of glucose in the blood and prescribed by an authorized person for human use.
2. Subsequent refills of sensors used to determine/monitor glucose levels and prescribed by an authorized person for human use are also subject to sales/use tax at a reduced rate of 1% in Illinois.
3. We are not sure if sales to Medicare and/or Medicaid patients are taxable.

Discussion:

1. Illinois ILCS SEC. 3-10 States that 'Sales for human use of prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics are subject to ROT, SOT, UT, and SUT at a reduced rate. However, such property is exempt from SOT when purchased for use by a person receiving public medical assistance who resides in a licensed long-term care facility and certain nonprofit organizations.

Also in Code Section 130.310 (d) it states 'Insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the reduced rate of tax. (Section 2-10 of the Act) Since the unit is used in treating diabetes in human beings and performs the same function as urine testing material or other blood glucose monitoring device it should qualify for the reduced rate of tax due in Illinois.

2. As refills of the Sensor are a pertinent component of the unit used to monitor glucose levels in the blood and prescribed by an authorized person for human use in the treating of diabetes they should also qualify for the reduced rate of tax in Illinois.
3. If there are exemptions for Medicare and/or Medicaid patients or other per above ABC's unit would not [sic] subject to sales/use tax in Illinois for these type sales.

We respectfully request that you review our foregoing analysis of the transaction and indicate whether you concur. If you do not concur with our analysis would you be so kind to state the reasons for your non-concurrence and include the appropriate statutory support for our edification.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax Act at 35 Ill. Adm. Code 120/2-10 provides that insulin, urine testing materials, syringes, and needles used by diabetics, for human use, are subject to the tax at

the rate of 1%. The Department has determined that blood glucose monitoring systems used in treating diabetes in humans qualify for the low rate of tax. See letters ST 92-0037, ST 94-0470, and ST 95-0518. The low rate also applies to the required refills.

Sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented through provision of an active exemption identification number. See 86 Ill. Adm. Code 130.2080(a). While no tax may be due on payments made directly to vendors by Medicare or Medicaid, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare and Medicaid. This means when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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